IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17 .04.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.4062 of 2006

Sosamma Thampy ... Petitioner

Vs.

1. The Assistant Commissioner (ULT),
-cum-Competent Authority (ULC)
153, Karnigar Street,
Adambakkam,
Chennai - 600 088.

2. The Special Commissioner and
Commissioner of Land Reforms,
Government of Tamilnadu,
Ezhilagam, Chepauk,
Chennai-600 005. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration as stated therein.

For petitioner : Ms.R.Vaigai
For respondents : Mr.M.Mahalingam, GA

O R D E R

This Writ Petition has been filed praying for the issuance of a Writ of declaration, declaring that the the proceedings initiated under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in R.C.No.254/87A, dated 31.08.1989, read with Rc.No.5633/93A, dated 25.02.1994, by the 1st respondent has abated on the promulgation of Act 20 of 1999 and consequently, the petitioner is the owner of the property situated in No.144, Seevaram Village, Saidapet Taluk, comprised in Survey No.51/1B1.

2. Heard the learned counsel for the petitioner as well as for the respondents.

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3. It is the case of the petitioner that she had purchased the land measuring one acre, under a document registered at the office of the Sub-Registrar, Saidapet, as document No.780/70. The property is situated at No.144, Seevaram Village, Saidapet Taluk, comprised in part of Survey No.51/1B1. The petitioner further submits that proceedings were initiated by the first respondent herein for acquisition of land to the extent of 3570 sq.metres as the land was said to be surplus since it was in excess of the ceiling limit prescribed by the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, (hereinafter referred to as the Act), as per proceedings of the first respondent, dated 10.11.1987. A statement was issued to the petitioner under Section 9 of said Act in which an area of 3570 sq.metres was determined to be the extent of vacant land held by the petitioner in excess of the ceiling limit. The petitioner had sent her objections on 05.12.1987 stating that she had retired from the partnership firm viz., M/s.A.R.C Engineering works on 01.04.1981 and no share of the property was allotted to her. Therefore, she was not concerned with the area of 2023 sq.metres said to be in excess of the ceiling limit since only an area of 1547 sq.meters belonged to her.

4. The proceedings before the competent Urban Land Ceiling authority resulted in a notice, dated 30.08.1994, asking the petitioner to appear on 16.09.1994 to file her objections for the proposed determination of the amount payable under Section 12(6) of the Act. Inspite of the objections sent by her, on 05.12.1987, that she is not concerned with 2023 Sq.meters belonging to M/s.A.R.C.Engineering Works and that only 1547 Sq.meters belonged to her, the above mentioned notice, dated 30.08.1994, was issued showing that an area of 3550 Sq. metres as being in excess of the ceiling limit prescribed under the Act. Therefore, the petitioner had submitted her objections by her communication, dated 16.09.1994, after which no further action was initiated by the respondents.

5. It is also the case of the petitioner that the Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 20 of 1999, was promulgated by which all proceedings seeking to acquire the excess lands were deemed to have abated and therefore, the petitioner continues to be the owner of the land and the land ceiling authorities do not have a lien over the property. The petitioner has also stated that after the notice, dated 30.08.1994, neither the physical possession of the property had been taken by the respondents nor the petitioner had been paid due compensation. The petitioner would emphasise that any statutory vesting under Section 11 (3) of the Act is of no relevance when no compensation has been paid to her. Moreover, physical possession has also not been taken by the competent authorities to dis-entitle the petitioner from claiming her rights over the property. Moreover, the proceedings initiated under the Act is deemed to be pending without having been

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completed and after the promulgation of Act 20 of 1999, all pending proceedings under the Act would have to be considered as abated.

6. In such circumstances, the petitioner had made representations to the respondents requesting them to pass necessary orders to the effect that the proceedings initiated earlier have abated and also to declare that the petitioner is the owner of the property after the Repealing Act came into force. The representations of the petitioner, dated 01.09.2005 and 26.10.2005 were received by the respondents but no orders were passed on the petitions. Hence the petitioner had approached this Court in Writ Petition 38638 of 2005 seeking for a Writ of Mandamus to direct the first respondent to pass orders on the representations after affording the petitioner an opportunity of personal hearing. The order was passed in the said writ petition, on 30.11.2005, directing the respondents to consider her representations and pass appropriate orders within the specified time limit. Following the order of the High Court, dated 30.11.2005, the second respondent had passed an order on 18.01.2006, stating that since the Principal Act had been repealed no appeal can be heard by the Appellate Authority, as contemplated under the said act. Therefore, the petitioner has been constrained to file the present writ petition.

7. The Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999, Act 20 of 1999, an Act to repeal the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, reads as follows :-

" BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fiftieth Year of the Republic of India as follows:-

1. Short title and commencement:- (1) This Act may be called the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999

(2) It shall come into force at once

2. Repeal of Tamil Nadu Act 24 of 1978 :- The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, (Tamil Nadu Act 24 of 1978) (hereinafter referred to as the principal Act), is hereby repealed.

3. Savings :- (1) The repeal of the principal Act shall not effect-

(a) the vesting of any vacant land under sub-section (3) of Section 11, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) The validity of any order granting exemption under sub-section 1 of Section 21 or any action taken thereunder.

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(2) Where -

(a) any land is deemed to have vested in the State Government under Section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority ; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings ;- All proceedings relating to any order made or purported to be made under the Principal Act pending immediately before the commencement of this Act, before any court, tribunal or any authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 12, 13, 14, 15, 15-B and 16 of the Principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

8. The learned counsel for the petitioner had laid emphasis on various judgments of the the Supreme Court and of this Court to show that the proceedings initiated against the petitioner under the Act had abated and the lands in question would, therefore, continue to be vested in her.

8.1. The learned counsel had relied on the decision of the Supreme Court in Smt.Angoori Devi Vs. State of U.P. and others (Judgment Today 2000 (Suppl.1) SC 295) wherein it was held as follows ;-

" ..... 2. These cases relate to the interpretation of different provisions of the Urban Land (Ceiling and Regulation) Act. During the pendency of these appeals in this Court, the Urban Land (Ceiling and Regulation) Act has been repealed by Act 15 of 1999 and the State of U.P. also has adopted the same by a Resolution. In view of the provisions contained in Section 3 of the Repealing Act and the fact that the possession of the vacant land has not been taken over by the State Government, which is asserted by the Counsel appearing for the appellants and is also

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apparent from the interim orders passed by this Court, the question for consideration no longer survives.

3. Further, under Section 4 of the Repealing Act all proceedings under the Act must be held to have abated. In that view of the matter, we do not think it necessary to proceed with this matter. These appeals stand disposed of accordingly."

8.2. This Court by an order, dated 12.09.2000, made in W.A.No.982 of 1999 in Dr.S.Pramila Vs. The Principal Commissioner and Commissioner of Land Reforms and another held as follows :-

"The learned counsel for the appellant has submitted that he is in possession and the matter is in respect of Tamil Nadu Urban Land Ceiling and Regulation Act, which is already repealed . In view of Section 4 of Repealing Act, all the proceedings shall be abated."

8.3. This Court by an order, dated 15.11.2000, made in W.P.Nos.9030&9031 of 1997 in P.S.Sundaram and another Vs. The Competent Authority (Urban Land Ceiling) and Assistant Commissioner (Urban Land Tax) and another held as follows :-

".....2. It is also stated that the petitioners are in possession of the land in question.

3. In the light of what is stated above and in view of Section 4 of the Tamilnadu Act 20 of 1999 repealing the Act of Tamilnadu Urban Land (Ceiling and Regulation) Act,1978, the entire proceedings including the impugned proceedings shall stand abated. Writ petitions are disposed of accordingly"

8.4. This Court by an order, dated 29.06.2001, made in W.P.No.12819 of 1991 in Rao Insulating (P) Ltd., Vs. Spl.Commissioner & Secretary to Government Revenue Department and others held as follows :-

" ..... In the light of the coming into force of Tamil Nadu Act 20 of 1999 and in particular to Section A of the Act all proceedings relating to any order made or purported to be made in particular, pending before the commencement of the Amendment act shall abate. It is represented that no final orders have been passed nor possession has been taken. If that be so, Section 4 of the Act squarely applies to the case of the Petitioner.

3. In the light of the said legal possession, nothing further survives in the Writ Petition. hence, the Writ Petition is dismissed."

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8.5. It is also seen that the First Bench of this Court in W.A.No.1239 of 1997 has held, citing the decision rendered by the Supreme Court in PT. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. & Others (JT 2000 (3) S.C.391) held as follows:-

> " .....This writ appeal has been filed challenging the order of the learned single Judge arising out of the Tamil Nadu Urban Land (Ceiling and Regulation) Act,1978. But in view of the State Act, 20 of 1999, the above Act, 1978 has been repealed. It is not disputed that the writ appellants are in possession as on today. If that be so, basing upon the judgment of the Apex Court in PT. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. & Others (JT 2000 (3) S.C.391) in which it is held that the proceedings under Urban Land (Ceiling and Regulation) Act gets abated, and more so if the possession of the land has not been taken over under the Urban Land Ceiling Act, this writ appeal has to be allowed. This writ appeal is allowed holding that the appellants are not liable to surrender any land under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

8.6. This Court by an order, dated 8.11.2001, made in WP.No.28398 of 1993 held as follows ;-

> " ..... In view of the Tamil Nadu Urban Land (Ceiling and Regulations) Repeal Act, 1999 (Act 20 of 99) repealing Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, no factual adjudication is required.
>
> In view of the fact that the possession of land in question is with the Petitioners and also of the fact that this Court has granted interim injunction as early as 18.11.1993 and the same is in force all along and in the light of the repealing Act 20 of 1999, I am of the view that the Petitioners are entitled to the benefits under the Act and the authorities are restrained from proceeding further."

8.7. This court by an order, dated 15.02.2002, made in WP.No.8684 of 1995 (2002 (2) CTC 716) in Allind Metal Fabricators Pvt.Ltd Vs. The Secretary to Government held as follows ;-

> " The Tamil Nadu Urban Land (Ceiling and Regulation) Act has been repealed by the repealing Act (Act 20 of 1999) and all pending proceedings also having been declared to have abated. As held by the Supreme Court in the case of Angoori Devi Vs. State

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of U.P., JT 2000 Suppl.1 (Supreme Court) 295, a decision by a Constitution Bench, if the possession of the land had not been taken prior to the repeal, such possession cannot be taken thereafter and no proceedings can be thereafter initiated under the repealed enactment. During the pendency of this writ petition the petitioner had the benefit of an interim order protecting his possession. It is also not the case of the respondents that they have taken possession.

2. The writ petition is therefore allowed"

8.8. In the case of C.V.Narasimhan – Vs- The Government of Tamil Nadu and others (2002 (2) Law weekly . 764) this court has held that when possession of the land is still with the owner and compensation has not been paid by the Government to the owner, certain rights enure to the owner in terms of the Repealing Act. It has been further held that Statutory vesting is of no relevance. If possession continues to be with the owner and he has not received compensation, then the authorities have to consider the owners claim and give a finding on that aspect.

8.9. In Ayesha Haque – Vs.- State of Tamil nadu and others- reported in 2003 Writ Law Reporter 193, this Court held as follows:-

"9. A perusal of the above quoted sections 3 and 4 – (Act 20 of 1999) makes it clear that the repeal shall not affect only the cases where the vesting of the land has taken place in favour of the Government under Section 11(3) and possession having been taken by the State Government.

10. In this case, though orders have been passed, declaring the land as excess, there are two facts which would militate against the continued applicability of the Ceiling Act. Firstly, the possession remains with the petitioner and therefore no complete vesting has taken place in favour of the State Government. Secondly, as against the order passed by the third respondent, an appeal has been filed before the Principal Commissioner, the second respondent herein, and therefore the proceedings declaring the excess land cannot be stated to have become final. Therefore, I am inclined to hold that Section 3 of Act 20 of 1999 cannot apply and in terms of Section 4, the proceedings have to be held as abated."

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8.10. Following the earlier order passed in a similar writ petition in WP.No.8684 of 1995, dated 15.02.2002 reported in 2002 (2) CTC 716), this court allowed the writ petition in WP.No.18581 of 2004 in M.C.Ram Mohan Vs. The Government of Tamil Nadu and others, by an order dated 14.07.2004 on the same terms.

8.11. This Court by an order, dated 09.09.2004, made in WP.No.6641 of 1997 in G.Ramasamy Vs. State of Tamil Nadu and others held as follows :-

> "..... 10. On a perusal of the counter affidavit filed on behalf of the respondents also there is no specific averment to the effect as to how the physical possession of the land was taken on 30.10.1991, by following the procedure prescribed under the provisions of the Act. In such circumstances, it will have to be necessarily held that though the declaration under Section 11 (3) of the Act came to be issued on 27.03.1991, the possession after issuance of 11/5 notice had not been validly taken as contemplated under the Provisions of the Act.
>
> 12. In the above said background, when the application of Act 20/1999 is considered, it will have to be held that there is no scope to hold that the respondents could be entitled to invoke Section 3(1) (a) of Act 20/1999. In as much as the physical possession of the land has never been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority, automatically the application under Section 4 of the said Act, comes into play and all the proceedings including the proceedings impugned in this writ petition should abate without anything more.
>
> 13. In the result, the writ petition succeeds and the orders impugned in the writ petition are set aside."

8.12. In Aarkay Distilleries Pvt. Ltd - Vs.-The Assistant Commissioner (ULT) cum Competent Authority, in W.P.No.35490 of 2004, by an order, dated 23.09.2005, this Court has held that when physical possession continues with the owner, the statutory vesting under Section 11(3) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act,1978, is of no relevance and therefore, under Section 4 of the Repealing Act, Act 20 of 1999, the entire proceedings initiated under the Principal Act would stand abated.

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8.13. This Court by an order, dated 25.11.2005, made in WP.No.28061 of 2004 in Mrs.B.Girija Vs. The Government of Tamil Nadu and others held as follows:-

> " After the coming into force of the Repealing Act 20 of 1999, which came into force on 16.6.1999 repealing the parent Act, namely the Tamil Nadu Urban Land (Ceiling & Regulation) Act, the proceedings initiated under the parent Act would survive for continuation only if it is shown that physical possession of the property declared as surplus had been taken over by the Government. If not, the Repealing Act says that all the proceedings would come to an end. Learned Government Advocate would submit that only symbolical possession had been taken and not physical possession. Since physical possession is not with the respondents, it is needless to state that all the proceedings initiated under the parent Act would come to an end. Under these circumstances, the writ petition stands allowed as prayed for.

8.14. This Court by an order, dated 29.11.2005, made in W.P.No.35275 of 2004 in Swaminathan Narayanan Nair Vs. The Principal Commissioner & Commissioner of Land Reforms and others held as follows :-

> "With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal. Proceedings were initiated under Tamil Nadu Urban Land Ceiling Act 1978 against the holdings of the petitioner and certain extent of land was declared as surplus. The above referred to Act was repealing by Act 20 of 1999, which came into force on 16.06.1999. There is a saving clause in the repealing Act, which protects the proceedings initiated under the Act as it stood originally, if possession of the property declared as surplus had not been taken over. Taking possession means taking physical possession.
>
> 2. Learned Additional Government Pleader fairly admits that physical possession of the property had not been taken at all. If it is so, the saving clause namely Section 4 of Act 20 of 1999, would not come to the benefit of the Government to continue the proceedings already initiated under the Act as it stood originally. Accordingly, the writ petition is allowed as prayed for.

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8.15. This Court by an order, dated 03.01.2006, made in WP.No.10611 of 1997 in R.Govindasamy Vs. State of Tamilnadu and others held as follows :-

> ".....10. In view of the repealing of the Tamil Nadu Urban (Ceiling and Regulation) Act 1978 by Act 20 of 1999 and in view of the order in WP.No.6641 of 1997 which squarely covers the issue on hand and in view of fact that the physical possession of the land has not been taken over by the State Government or any other person duly authorised by the State Government in this behalf or by competent authority , Section 4 of the Act comes into play and all the proceedings including the proceedings impugned in this writ petition will abate.
>
> 11. In the result, the writ petitioner succeeds and the order impugned in the writ petition is set aside. The writ petition is allowed."

9. The learned Government Advocate appearing for the respondents, was not in a position to show from the records that the actual possession of the lands in question had been taken by the Government or that any compensation was paid to the petitioner for the lands sought to be acquired.

10. In these circumstances, it is clear that the proceedings initiated by the respondents for acquiring the lands of the petitioner under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, stood abated on the passing of the Repealing Act 20 of 1999 and therefore, the lands in question continues to be vested in the petitioner and neither the State Government nor the land Ceiling Authorities had any lien over the said properties of the petitioner.

11. Therefore, the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in R.C.No.254 / 87A, dated 31.08.1989, read with R.C.No.5633/93A, dated 25.02.1994, by the first respondent will stand abated on the promulgation of Act 20 of 1999. Hence, the writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To,

1. The Assistant Commissioner (ULT),
-cum-Competent Authority (ULC)
153, Karnigar Street,
Adambakkam,
Chennai - 600 088.

2. The Special Commissioner and
Commissioner of Land Reforms,
Government of Tamilnadu,
Ezhilagam, Chepauk,
Chennai-600 005.

1 cc to M/s. R. Vaigai, Advocate, Sr. 18863

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